

NOTICE OF EFFECTIVE DATE OF REGULATION CHANGE

**California Code of Regulations
Title 2, Administration
Division 1. Administrative Personnel
and
Division 5. Local Agency Personnel Standards**

DATE: May 19, 2003

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY RULES—AMENDMENT TO
§ 547.80 AND REPEAL OF § 547.81; AMENDMENT TO LOCAL
AGENCY PERSONNEL STANDARDS §§ 17030, 17111, 17112, 17151
AND REPEAL OF §17434

This memorandum is to advise you that the subject revisions to Title 2 of the California Code of Regulations (CCR), as described in the State Personnel Board's (SPB) Notice of Proposed Amendment and Repeal of Regulations and Statement of Reasons dated November 22, 2002, became effective on May 7, 2003. A copy of the final regulations is attached. These final regulations will be published in the CCR, Title 2.

These regulatory changes respond to the findings of court decisions concerning equal employment opportunity (EEO) programs for State agencies and local merit system agencies. The following summarizes the proposed changes:

- Updates the terminology and definitions used in connection with workforce data collection and evaluation of EEO within the State civil service and local agency merit systems.
- Repeals State civil service regulation, 2CCR § 547.81, that provides guidelines for the establishment of EEO goals and timetables process for minorities and women.
- Repeals local agency merit system regulation, 2CCR § 17434, and deletes any current text that allows special recruitment for underrepresented groups.

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CONTACT PERSON:

Please direct inquiries to Ted Edwards at the State Personnel Board, 801 Capitol Mall, MS 12, Sacramento, CA 95814, or to tedwards@spb.ca.gov, or (916) 653-1276, TDD (916) 653-1498, or fax comments to his attention at (916) 651-9016.

Laura Aguilera
Assistant Executive Officer

Attachment: Text of Final Regulations

REGULATIONS CONCERNING THE STATE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Subchapter 1.7 Equal Employment Opportunity Program

Article 1. State Work Force Data Collection and Evaluation

§ 547.80. Definitions.

The following definitions shall be used for work force data collection and evaluation of equal employment opportunity within state civil service, including those activities related to layoff:

- (a) "Class" means a group of positions as defined in Government Code Section 18523.
- (b) "Racial/Ethnic Group" includes persons who are members of one of the following groups: American Indian/Native American, Asian, Black/African American, Filipino, Hispanic, Pacific Islander, and White. These groups are defined as follows:
 - (1) "American Indian/Native American" means any person who is a member of an American Indian Tribe or band recognized by the Federal Bureau of Indian Affairs, or has at least one-quarter American Indian blood quantum of tribes or bands indigenous to the United States or Canada.
 - (2) "Asian" means any person whose origin is the Far East, Southeast Asian or the Indian subcontinent and includes, for example, China, Japan, and Korea.
 - (3) "Black/African American" means any person whose origin is any of the Black racial groups of Africa.
 - (4) "Filipino" means any person whose origin is the Philippine Islands.
 - (5) "Hispanic" means any person whose origin is Mexico, Puerto Rico, Cuba, Spain, or the Spanish-speaking countries of Central or South America. It does not include persons of Portuguese or Brazilian origin, or persons who acquired a Spanish surname;
 - (6) "Pacific Islander" means any person whose origin is in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
 - (7) "White" means any person whose origin is Caucasoid.
- (c) "Occupational Group" means a group of jobs or classes that includes the entry level, other working levels, and supervisory levels within the same general occupational field of work;
- (d) "Relevant Labor Force" means the pool of individuals who possess the requisite qualifications for the classification or occupational group within the geographic area in which the agency can reasonably expect to recruit.
- (e) "Statistically Significant" means the degree of underutilization is equal to or

greater than the .05 level of significance using the one-tailed Z Test method of statistical analysis outlined in Appendix 4 of the *Interim Guidelines for Conducting the Annual Analysis of the State Work Force*, issued March 2002, by the State Personnel Board. This document is hereby incorporated by reference in its entirety. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.

(f) "Underutilization" means having fewer persons of a particular race/ethnic or gender group in an occupation or at a level in a department than would reasonably be expected by their availability in the relevant labor force.

(g) "Work Force" means incumbents in full-time and other-than-full-time positions in the state civil service employed by the appointing authority.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092.5, 18523, 19702.1, 19790, and 19791 and 19792, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; and "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," *Federal Register*, October 30, 1997; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

REGULATIONS CONCERNING THE LOCAL AGENCY MERIT SYSTEM EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

TITLE 2. Administration Division 5. Local Agency Personnel Standards

§17030. Definitions.

The following definitions apply to both Chapter 1 and Chapter 2 of the Local Agency Personnel Standards. Where more appropriate, definitions are incorporated into the text of a regulation.

- (a) Appointing Authority: Local agency legislative body or a department head (or their representative) having authority to appoint and to remove employees from employment.
- (b) Career Service: All positions in a local agency that are covered by these rules. See Section 17200 for identification of covered and exempted positions.
- (c) Certification: Forwarding of names of eligibles from an appropriate eligible list or lists to the appointing authority.
- (d) Discrimination: The adverse effects of a personnel management decision on employees or applicants based on race, color, sex, age, disability, religious creed, national origin, ancestry, marital status, or other category identified by statute, when such decision is not based on job-related criteria.
- (e) Executive Officer: The individual appointed by the California State Personnel Board to serve as its executive officer. Under the provisions of Government Code Section 18654, any power, duty, or jurisdiction which the Board may legally delegate is presumed to have been delegated to the executive officer unless the Board has formally reserved the same for itself.
- (f) Federal Standards: Those standards contained in the "STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION" which are filed in regulatory form in the Consolidated Federal Register (CFR) under Title 5, Part 900, Subpart F (Vol. 44, No. 34, Friday, February 16, 1979) or such future revisions which become applicable.
- (g) Impartial Process: A dispute resolution procedure wherein a decision is rendered by a group or individual capable of making an objective judgment free of favor or prejudice. Such group or individual may include but is not limited to the following:
 - (1) A "civil service commission" established substantially as set forth in Government Code Sections 31110 through 31113, inclusive, provided no member serves in any other capacity in the local agency; and
 - (2) Any other group or individual selected:

- (A) By mutual agreement of the parties; or
- (B) By some other objective method which will ensure impartiality. Examples of those who might satisfy these latter conditions are ad hoc panels, State Hearing Officers, and professional arbiters.
- (h) Local Agency: As defined in Government Code Section 19810, local agency means any city, county, city and county, district, or other subdivision of the state or any independent instrumentality thereof.
- (i) Permanent Appointment: The status of an employee who has successfully completed a probationary period.
- (j) Permanent Status: The employment condition in which an employee has rights in the career service and in a class. Upon satisfactory completion of the probationary period following initial appointment, an employee gains permanent status in the career service, and is subject to removal from the career service only for cause, curtailment of work or lack of funds. Upon satisfactory completion of the probationary period following promotion within the career service, an employee gains permanent status in the class to which promoted, and is subject to removal from the class only for cause, curtailment of work or lack of funds.
- (k) Personnel Plan: The personnel plan consists of all documents governing employment in the departments of a local agency administering state and federally funded programs. These include, but are not necessarily restricted to: charter provisions; salary, position budget, and enabling ordinances; rules and regulations; class specifications, examination announcements, and related materials that set forth standards; employee-management memoranda of understanding; and such other reports, minute orders, administrative rules, and procedural instructions that may be specifically requested by the State Personnel Board Executive Officer and necessary to establish a merit system for its grant-in-aid departments in accordance with these standards.
- (l) Position: Any office or employment (whether part time or full-time, temporary or permanent, occupied or vacant) calling for the performance of specified and related duties.
- (m) Probationary Period: The time limited period of paid service which is an extension of the examination process required before an employee gains permanent status.
- (n) Statistically Significant: the degree of underutilization is equal to or greater than the .05 level of significance using the one-tailed Z Test method of statistical analysis outlined in Appendix 4 of the *Interim Guidelines for Conducting the Annual Analysis of the State Work Force*, issued March 2002, by the State Personnel Board. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.
- (o) Status: The condition of an employee's appointment, such as provisional, probationary, permanent, or as defined in the personnel rules adopted by the governing board of a local agency.
- (p) Suspension: An enforced leave of absence for disciplinary purposes or pending investigation of charges made against an employee.

(q) Underutilization: Having fewer persons of a particular race/ethnic or gender group in an occupation or at a level in a department than would reasonably be expected by their availability in the relevant labor force.

NOTE: Authority cited: Sections 19801, Government Code.

Reference: Sections 19800-19810, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

(Section 17110 is unchanged.)

§17111. Recruitment.

Recruitment efforts shall be planned and carried out in a manner that assures equal employment opportunity and open competition for initial career service appointment for all job applicants. Basic recruitment efforts for entry into the career service shall include posting of examination announcements in appropriate public places for a minimum of five working days to ensure that an adequate number of candidates will apply.

NOTE: Authority cited: Section 19801, Government Code.

Reference: Sections 19802 and 19803, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

§17112. Selection.

(a) Selection procedures, including appropriate ranking for entry to the career service, shall be job related and shall maximize to the extent practicable validity, reliability and objectivity. The Uniform Guidelines on Employee Selection Procedures, as published in the Consolidated Federal Register (at 5 CFR, 900, Subpart F, Appendix B), are incorporated into these rules.

(b) Competition for appropriate positions may be limited to facilitate the employment of persons with a disability or participants in employment or rehabilitation programs authorized by Congress or the California Legislature.

(c) Appointments to permanent career service positions shall be made through selection from appropriately ranked eligible lists. Appointment procedures may not allow appointment either beyond the top ten eligibles or the top ten percent of eligibles or the top predetermined score group of those on an eligible list who are willing to accept the conditions of employment.

(d) Permanent appointment for entry to the career service will be contingent upon satisfactory performance by the employee during a reasonable, time-limited probationary period. As a general rule, probationary periods may not exceed one year.

(e) Non-status appointments shall not be used as a way of defeating the purpose of the career service and shall have a reasonable time limit. As a general rule, reasonable time limit is one year. If lists of eligibles are available, they shall be used for filling temporary positions. Short-term, emergency appointments may be made without regard to the other provisions of this section, to provide for maintenance of essential services in an emergency situation where normal procedures are not practical.

NOTE: Authority cited: Section 19801, Government Code.
Reference: Sections 19802 and 19803, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

(Sections 17113-17150 are unchanged.)

§17151. Equal Employment Opportunity.

- (a) Equal opportunity shall exist in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of employment.
- (b) Prohibitions against discrimination consistent with the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000e et seq.), the Rehabilitation Act of 1973 as amended (29 U.S.C. § 791 et seq.), the Age Discrimination in Employment Act of 1967 as amended (29 U.S.C. 621 et seq.), the Equal Pay Act of 1963 (29 U.S.C. § 206 (d)(1)) and other relevant statutes shall be established and enforced.
- (c) Equal employment opportunity programs shall be developed and implemented to include the following:
- (1) Removal of artificial barriers to equal employment opportunity.
 - (2) Assessment of the local agency's work force, including a comparison of the local agency's work force composition with the relevant labor force composition. Records of such assessments and comparisons shall be provided annually and at such other time as required to the State Personnel Board Executive Officer.
 - (3) Where there is statistically significant underutilization of any group based on race, ethnicity or gender as shown by the work force-labor force comparison, the local agency shall:
Develop and implement written recruitment plans which will ensure all-inclusive outreach and equal opportunity for all groups. Copies of such recruitment plans shall be made available, upon request, to the State Personnel Board Executive Officer.
Assess selection processes to ensure that they are based solely on job-related criteria and are free of illegal adverse impact as defined in the Uniform Guidelines on Employee Selection Procedures (Guidelines), incorporated in Section 17112, against any group. Such assessments shall be conducted consistent with procedures outlined in the Guidelines. Where illegal adverse

impact is found, the local agency shall identify the cause and take appropriate corrective action on a timely basis.

Comply with all equal employment opportunity requirements mandated by federal agencies as a condition for obtaining or maintaining federal funding of programs.

NOTE: Authority cited: Section 19801, Government Code.

Reference: Sections 19802 and 19803, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

(Sections 17152-17432 are unchanged.)